IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13971 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

S.T.KARMACHARI MANDAL

Appearance:

1. Special Civil Application No. 13971 of 1993
MRS VASAVDATTA BHATT for Petitioner No. 1
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/08/2003

ORAL JUDGEMENT

Heard learned advocate Ms. Vasavdatta Bhatt for the petitioner. Notice of rule issued by this Court has been served upon the respondent but no appearance has

been filed on behalf of the respondent Mandal. Even the Farad of this matter has also been verified by Shri Somabhai Patel, Shirastedar of this Court as per the directions of this Court and the submission made by him was that no appearance has been filed on behalf of the respondent Mandal.

By way of this petition under Article 227 of the Constitution of India, the petitioner corporation is challenging the legality, validity and propriety of the award made by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 200 of 1981 dated 30th July, 1992. As per the impugned award, the industrial tribunal has directed the petitioner corporation to regrant the promotions to the workmen concerned with effect from the dates on which they were reverted till the dates on which they were repromoted. The corporation was further directed to grant them all consequential monetary benefits flowing therefrom and to consider their services continuous and also to consider their seniority accordingly. The corporation was directed to execute the impugned award within three months from the date of publication of the award. This Court has, by order dated 19.9.1994, refused interim relief while admitting the petition by issuing rule thereon.

2. Learned advocate Ms. Bhatt appearing for the petitioner has submitted that the concerned workmen who were granted promotions temporarily were not selected by the selection committee and, therefore, their temporary promotions were withdrawn by the Corporation and that order of withdrawal of their promotion was challenged by the concerned workmen through union before the conciliation officer by raising an industrial dispute which was ultimately the dispute was referred for adjudication to the industrial tribunal concerned by order dated 27th March, 1981. It was submitted by her that the tribunal has committed error insetting aside the order of withdrawal of temporary promotion. She submitted that the tribunal ought to have considered that the concerned workmen were not selected by the selection committee and, therefore, their promotions were withdrawn. She also submitted that their temporary promotions were subject to the selection by the selection committee and, therefore, the action of the corporation to withdraw such temporary promotions was legal and correct and, therefore, the tribunal ought not to have made the impugned award in favour of the concerned workmen.

I have considered the submissions made by the

learned advocate Ms. Bhatt on behalf of the petitioner. I have also perused the award made by the tribunal in favour of the concerned workmen in the reference made by the appropriate Government at the instance of the union. The industrial dispute between ST Central Workshop Naroda ("Corporation" for short) and the workmen employed under it was referred to for adjudication to the Industrial Tribunal, Ahmedabad by the appropriate Government by order dated 27.3.1981 relating to the demand regarding cancellation of the orders no.150 and 224 of 1975 dated 9.5.1975 and 13.6.1975 withdrawing promotions granted to 20 workmen of the Corporation's Central Workshop, Naroda at Ahmedabad and for granting them all consequential benefits flowing therefrom. The exact terms of reference was to regrant temporary promotions already granted to the concerned workmen which are withdrawn by orders dated 1.5.75 and 14.6.75 and to reimburse the monetary loss suffered by the concerned workmen on account of the withdrawal of the promotion orders for the period commencing from the dates when they were withdrawn till the date they were regranted and to continue the promotions of the workmen from the respective dates they were withdrawn and to reimburse their monetary loss and to continue their seniority.

It was submitted by the learned advocate Ms. Bhatt that since the interim relief has been refused by this court while admitting the petition, the corporation has already implemented the award made by the tribunal, of course, subject to the ultimate out come of the present petition.

Before the tribunal, statement of claim was filed by the union at Exh. 5 and the reply thereto was filed by the corporation at Exh. 6. The merits of the matter were thereafter examined by the tribunal on the basis of the documents on record produced by the parties before it. Certain undisputed facts relevant for the purpose of deciding the matter at issue has been discussed by the tribunal in para 8 of the impugned award. It was not disputed before the tribunal that 20 workmen concerned joined service in the Corporation's Central Workshop, Naroda, Ahmedabad in the categories as Art "C" or Helper in different trades and after they passed the trade tests in May, 1972, they were promoted as Art "B" and Art "C" respectively on temporary basis during they ear 1972 on account of implementation of its production programme. It has been observed by the tribunal in para 8 of the impugned award that even that is quite evident on perusal of the contents of the letter dated 31.1.72 Exh. 78 mentioning the particulars about the employees who passed

the trade test and also on perusal of the contents of various promotion orders at Exh. 51 to 59. It was also not disputed before the tribunal that their temporary promotions were continued from time to time till 31.3.1975 but thereafter, the Works Manager of the Corporation's Central Workshop Naroda Ahmedabad by order dated 9.5.1975 continued temporary promotions of five concerned workmen as named in that order till 30.4.75 and withdrew their temporary promotions w.e.f.1.5.75 on the ground that they were not selected by the Selection Committee and they were reverted back to their original position as Art C or Helper as the case may be. Similarly, said Works Manager has by office order dated 13.6.1975 continued temporary promotions of fifteen concerned workmen named in that order till 13.6.1975 and withdrew their temporary promotions with effect from 14.6.1975 on the ground that they were not selected by the select committee and they were reverted to their original position as stated earlier and that is clear on perusal of the contents of those orders whose xerox copies are produced at Exh. 64 and 65 respectively.

The tribunal has also considered that it was also equally undisputed that the selection committee for selection of persons in departmental sector was held on 7.5.75 for promotion to the post of Leading Hand, Art A, Art B, Art C in different trades of electric, machine, coach, tyres and electroplating shops of the corporation's central workshop in connection with the trade test held in 1972 and out of 20 workmen concerned, only on mentioned at sr.no.2 of the office order no.150 of 1975 and all the fifteen mentioned in the office order no. 224 of 1975 were rejected for promotions on account of adverse confidential reports and that is quite clear on perusal of the contents of the minutes of that meeting, whose true copies were produced by the corporation before the tribunal. It has also been observed by the tribunal that it is an admitted fact that out of the 14 concerned workmen from whom the union has restricted their demand two mentioned at sr.no.1 and 4 of office order no. 150 of 1975 were again promoted w.e.f. 19.5.77 and 21.2.77. Similarly 12 concerned workmen at sr.no.1 to 5 and 7 to 13 were again promoted with effect from 31.3.77, 31.3.77, 31.3.77, 31.3.77, 15.6.81, 15.6.81, 15.6.81, 6.4.76, 1.4.76 and 1.4.76 respectively as is clear on perusal of the statement vide Exh. 80 prepared by the union from the service books of these concerned workmen at Exh. 76 as well as from the contents of the order dated 21.8.77 at Exh. 77. Thereafter, as per para 11 of the award in question, the tribunal has considered that it is an admitted fact that

as per the GSO No. 503 dated 19.6.59 issued by the General Manager of the Bombay State Road Transport Corporation in view of the Corporation's Resolution no. 3834 dated 24.1.1959 in exercise of the authority vested in the corporation by virtue of Regulation 43-A of the State Transport Employees Service Regulations, it has been directed that the recruitment of the candidates to the service of the corporation and the grant of promotion to, the fixation of the seniority of, and the recategorization of, its employees w.e.f.1.7.59 will be in accordance with the Bombay State Road Transport Corporation (Recruitment, Promotion, Seniority and Re-ca tegorization) Procedure. Relevant extract of that GSO relating to promotion covering clause 36 to 64 is produced at Exh. 43 before the tribunal. The tribunal has taken into consideration the relevant clauses 37 and 39 thereof which inter alia provides that the employees other than class IV employees shall be entitled to be considered for promotion on completion of not less than one year's service in their post in the corporation except as otherwise provided and such other employees in order to be eligible for promotion shall be required to pass such departmental examination as may be prescribed by the Corporation for that particular grade. Thereafter, in para 12 of the impugned award, the tribunal has observed that as per GSO 116 of 1966 dated 24.10.1966, certain instructions were issued for following principles which would govern the eligibility of the candidates qualifying for promotion to a higher posts in the departmental sector and they were (1) eligibility for appearing in the departmental examination/trade test; (2) Minimum years of service (3) seniority; (4) written examination/trade test and (5) Confidential Reports. The last item namely Confidential Reports inter alia provides that the same should be taken into consideration only when the employee qualifies himself at the written test/trade test.After considering this, the tribunal has observed in para 13 of the award that it is obviously clear from the material on record that though the concerned workmen admittedly passed trade test in May, 1972, they were never called by the selection committee till 7.5.75 and for these three years, were either good or fair and none of them had received any adverse remarks. It has also been observed by the tribunal that of course, it appears that some of them had prior to those years received some adverse remarks but that would not be relevant because inspite of such adverse remarks, they were permitted to appear in the trade test held in May, 1972 and they were given temporary promotions and the same were extended from time to time for a period of about three years till those two

office orders were issued in May and June, 1975 after the meeting of the selection committee held on 7.5.1975 and, therefore, the ground mentioned in the office orders was not fully correct and the reasons assigned by the selection committee for not selecting them for promotion was also not correct. The tribunal also observed that it appears that the selection committee never met after the concerned workmen passed the trade test in 1972 and they were given temporary promotion till 7.5.1975 and after the selection committee meeting, on that day, it rejected the promotion of the sixteen concerned workmen as per the contents of the minutes of the meeting dated 7.5.75 at Ex. 70; meaning thereby, that four concerned workmen mentioned at sr.no. 1 and 3 to 5 of the first office order no. 150 of 1975 were not rejected for promotion on the ground of adverse remarks in their confidential reports because there is no specific mention to that effect against their names in the said document at Exh. 70. Therefore, really, they were also rejected just like those other fifteen concerned workmen mentioned in the second office order no. 224 of 1975 and then, their names would have been there in that document. Thus, after consideration of the material on record, the tribunal was of the view that the action of the Management in withdrawing the promotions after such a long lapse of time on such a ground is neither legal nor proper nor justifiable and it can be said that those office orders were issued by the corporation in arbitrary manner lacking bona fides and on account of issuance of such orders, the workmen have suffered considerable monetary loss. Thus, the tribunal was of the view that the ground on which the order of promotion has been withdrawn by the corporation is not fully correct and the reasons assigned by the corporation are also not correct. This being the factual aspect discussed by the tribunal and ultimately come to the conclusion that the selection committee did not met for such along period of three years for whatever reasons, it may be but their temporary promotions were extended and after selection committee meeting, such device was found out and and some of these concerned workmen were punished for no fault of their own by stating that their promotions were rejected because of their adverse confidential reports. Thus, the tribunal concluded, as stated earlier, that the action of the Management in withdrawing the promotions after such a long lapse of time on such a ground is neither legal nor proper nor justifiable and it can be said that those office orders were issued by the corporation in arbitrary manner lacking bona fides and on account of issuance of such orders, the workmen have suffered considerable monetary loss. The tribunal also considered that the

promotion is a matter of discretion and it is a managerial function but considering the reasons assigned by the tribunal as stated above.

I have perused the entire award made by the tribunal. This court is of the view that the tribunal is justified in coming to such conclusions. The conclusions drawn by the tribunal are based on the appreciation of the facts which were undisputed before it. The tribunal has considered that the none of the CRs of the concerned workmen from 1971 to 1975 were adverse to any workmen concerned. The tribunal was of the view that the reason assigned for withdrawal of the orders of promotion was not proper and, therefore, the tribunal set aside the order of withdrawal of promotion. According to my opinion, the tribunal has in detail considered all the documents and has rightly appreciated the same and has rightly concluded that the corporation has not been justified in withdrawing the orders of promotion of the concerned workmen. I am also of the view that in doing so, the tribunal has not committed any error and has also not committed any procedural irregularity. Even Ms. Bhatt appearing for the petitioner has also not been able to point out that the findings recorded and the conclusions drawn by the tribunal are erroneous or perverse or that the tribunal has committed any jurisdictional error.

This Court is having very limited jurisdiction under Article 227 of the Constitution of India. It is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 227. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal

with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

Recently also, the Apex Court has considered the scope of Article 226 and 227 of the Constitution of India in case of OUSEPH MATHAI AND OTHER V. M. ABDUL KHADIR reported in 2002 [1] SCC 319. The relevant observations in para 4 & 5 are quoted as under :-

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Warayam Singh v. Amarnath this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora v. Commr. of Hills Division & Appeals. In Babhutmal Raichand Oswal v. Laxmibai this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R. V.

Northumberland Compensation Appeal Tribunal, ex p Shaw [All ER at p.128] This Court in Chadavarkar Sita Ratna Rao v. Ashalata S. Guram held : [SCC pg.460, para 20]

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of the fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a findings are perverse and not based on any material evidence or it resulted in manifest injustice [see Trimbak Gangadhar Telang]. Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indiction of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limit of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

Recently also, the Apex Court has considered the scope of Article 227 of the Constitution in case of ROSHAN DEEN VS. PREETILAL reported in [2002] 1 SCC Pg.100. Relevant observations in para-12 are quoted as under :-

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measure to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in

> exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it [vide State of U.P. v. District Judge, Unnao]. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

Therefore, in view of these facts and considering the limited powers enjoyed by this court while exercising the powers under Article 227 of the Constitution of India, I am of the view that unless is successfully demonstrated before this Court that the findings given by the tribunal are perverse or that the jurisdictional error has been committed or that the tribunal has committed any procedural irregularity, this court cannot interfere with the findings given by the tribunal. Here, in the facts of the present case, learned advocate Ms. Bhatt has not been able to point out any infirmity and/or procedural irregularity or the jurisdictional error committed by the tribnual and in view of that, the tribunal was justified in passing the award in question. Therefore, the tribunal was right in passing the award in question which would not require any interference in this petition under Article 227 of the Constitution of India.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

Dt.5.8.2003. (H.K. Rathod,J.)

Vyas